IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1257 of 1995

[

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

HEIRS OF BHAIJIBHAI KALIDAS

Versus

ICCHABEN D/O NARANBHAI & W/O KANTILAL RAMJIBHAI

Appearance:

Mr.R.S.Pandya, advocate for the petitioners

Mr.A.J.Patel,advocate for respondent no.1

Mr.K.C.Shah.Asstt.Govt.Pleader instructed by M/s.Purnanand and company for respondents nos.2 to 4.

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 27/06/96

ORAL JUDGEMENT

Could the petitioners be said to be members of the owner's family so that they can be held to be deemed tenants under Section 4 of the Bombay Tenancy and Agricultural Lands Act,1948 ('the Tenancy Act' for short)

is the heart and theme of the petition on hand under Article 227 of the Constitution of India.

With a view to appreciating the aforesaid important question, a few material relevant facts may be set out at the outset. The agricultural land admeasuring 6 acres-2 gunthas situated in the sim of Dholka was owned by one Bai Pasiben,widow of Naran Mathur, who is hereinafter referred to as 'the disputed land'. Owner Pasiben who has now expired was the mother of respondents nos.l and 4. After the death of Pasiben, the Mamlatdar and ALT Dholka had started proceedings under Section 32-G of the Tenancy Act. It may be mentioned that the Mamlatdar and ALT ,Dholka had started inquiry under Section 32G in the year 1961, but since Bai Pasiben was widow,the right of then tenant to purchase the disputed land came to be deferred and postponed by an order dated 30.11.1961.

Therfore,after the death of Pasiben, proceedings came to be started under Section 32-G by the said authority. After the inquiry, it was held that deceased Bhaijibhai Kalidas ,the father of the petitioners herein was not a tenant and was not entitled to purchase the disputed land under Section 4 of the Tenancy Act as he was related to Pasiben. He held that Bhaijibhai Kalidas was father-in-law of Jiviben,respondent No.4 herein. He also held that respondents Nos.l and 4,daughters of deceased Pasiben were entitled to file a suit under Section 70(b) of the Tenancy Act to obtain possession of the land in question from the said Bhaijibhai Kalidas.

Deceased Bhaijibhai Kalidas ,being aggrieved by the aforesaid order had filed tenancy appeal No.ll2/75 before the Assistant Collector,Dholka which also came to be dismissed by the judgment and order dated 3l.1.1976. The matter was carried further in a revision by filing revision application No. 193/76 before the Gujarat Revenue Tribunal ('GRT' for short) Ahmedabad which was allowed by the judgment and order dated 8.9.1976 whereby the judgment and order recorded by the lower courts came to be quashed.

By virtue of the judgment and order of the GRT as aforesaid, the matter was remanded to the Mamlatdar and ALT with direction to give his clear finding regarding tenancy rights under Section 32G of the Act. It was also observed that he had no authority to discuss the provisions of section 70(b) of the Tenancy Act and to give instructions about the same in the inquiry under Section 32G. It was,therefore,directed that no such instructions or orders should be passed by him. Thus,the

revision was allowed and remanded for a fresh inquiry in light of the directions and observations.

After remand, the Mamlatdar and ALT,Dholka upon fresh inquiry and evidence, found deceased Bhaijibhai Kalidas ,the father of the petitioners to be the tenant of the disputed land and fixed the purchase price which was to be paid in eight instalments by passing an order dated l6.1.1984.

Obviously, being aggrieved by the judgment and order of the Mamlatdar and ALT,respondent No.1 had filed tenancy appeal No. 125 of 1984 before the Deputy Collector,Land Reforms,Appeals,Ahmedabad who by his judgment and order dated l5.9.1987 dismissed the appeal. Thereafter, respondent No.1 preferred revision No. 742 of 1987 before the Gujarat Revenue Tribunal. The Tribunal allowed the revision and quashed the judgments and orders passed by the appellate authority and Mamlatdar and ALT. The tribunal inter alia found that the relationship between deceased Pasiben and deceased Bhaijibhai Kalidas to be that of Vevai and Vevan,deceased Bhaijibhai Kalidas would be a member of the family of the said Pasiben. It is in this context that the Tribunal held that deceased Bhaijibhai ,the father of the petitioners is not a protected tenant, by passing a judgment and order on 21.4.1994. Respondent No.4/1 pursued the remedy of review before the Tribunal. However,the review application filed by respondent No.4/1 was dismiswsed on 12.10.1994. In the aforesaid circumstances, the petitioners who are heirs of deceased Bhaijibhai Kalidas have come up before this court challenging the legality and validity of the judgment and order of the GRT dated 2l.4.1994 by filing this petition under Article 227 of the Constitution of India.

The learned advocate appearing for the petitioners has forcefully contended that relationship between the petitioners and deceased Pasiben who was the owner of the land cannot be said to be relationship of members of the family.According to his further contention, relationship was that of landlord and tenant.Thus,it is submitted that the impugned judgment and order of the Tribunal is totally perverse and manifestly illegal requiring interference in this petition holding the petitioners as tenants.

The submissions raised on behalf of the petitioners are countenanced and combated with equal vehemence by the learned advocate for the respondents.

This court was taken through the entire record and the relevant provisions of law in course of marathon submissions.

Having examined the facts and circumstances emerging from the record of the present case and after having heard the learned advocates appearing for the parties while considering in the relevant legal background,this court has no hesitation in finding that the judgment and order of the Tribunal requires interference while exercising extra-ordinary equitable jurisdiction of this court under Article 227 as the impugned judgment and order is manifestly illegal,unjust and perverse for the reasons which this court hastens to articulate hereafter.

The petitioners' case is that they are heirs of deceased tenant Bhaijibhai Kalidas in respect of the disputed land. The respondents' contention is that deceased Bhaijibhai Kalidas cannot be said to be a tenant as he was cultivating the land in dispute as a member of the family of the owner viz.Pasiben. The following facts are undisputed.

That the disputed land originally belonged to one Naran Mathur. He died long before leaving his wife Pasiben and two daughters viz. Ichcha and Jivi.Pasiben died on l3.11.1974. Daughter Ichha got married with one Kanti Ramji. Daughter Jivi got married with son of the original tenant Bhaijibhai Kalidas. Thus, Jivi is the daughter-in-law of deceased tenant Bhaijibhai Kalidas. Name of husband of Jivi is Naran. Thus, it is an admitted fact that original tenant, father of the petitioners- Bhaijibhai Kalidas is the father-in-law of Jivi who is the sister of Bai Ichha,respondent No.1. So, the relationship between deceased Pasiben, the owner of the disputed land and deceased-tenant Bhaijibhai was that of what is popularly known as Vevai in Gujarati parlance.

The GRT reached the conclusion that Bhaijibhai Kalidas was Vevai of Pasiben and,therefore,he is a relative under section 4 of the Tenancy Act. The Tribunal also held that deceased Bhaijibhai entered into possession of the disputed land after marriage of Jivi with his son.The Tribunal therefore reached the conclusion that deceased Bhaijibhai is not entitled to claim any tenancy rights under Section 4 of the Tenancy Act. Therefore,the revision was allowed and the orders passed by the lower authorities came to be quashed and set aside.

It is true that the jurisdictional scope of petition under Article 227 is very much circumscribed and no

interference is warranted unless the impugned order or decision is shown to be manifestly perverse ,against the provisions of law,illegal or if it is shown to be actuated with ulterior and extraneous considerations like mala fides. The power of superintendence contemplated by the provisions of Article 227 has been limited in a narrow compass. Finding of fact can be said to be perverse or manifestly illegal,inter alia, if it is such as no reasonable person would reach such a conclusion on the basis of the material on record.It is in this legal background that the merits are required to be examined and appreciated.

Both the authorities below found on appreciation of facts that Bhaijibhai Kalidas was the tenant in respect of the disputed land. It was also found that he cannot be said to be a member of the family of the owner of the disputed land. The Tribunal,in revision wherein also the scope is very much circumscribed,reversed the finding of facts without cogent reasons. There was no case for reassessment or re-analysis of the factual aspects concurrently reached by the two authorities below. Apart from that, the Tribunal committed a serious error in interpreting the provisions of Section 4 of the Tenancy Act. It is also found from the record and the impugned judgment of the Tribunal that the Tribunal overlooked the important evidence which was relied on by the authorities below. The tribunal committed a serious error in revising the factual conclusion that Bhaijibhai Kalidas was not a member of the family of the owner.

It would be necessary at this stage to refer to the relevant provisions of the Tenancy Act. Tenant is defined in Section 2(18). It would be necessary to refer to the said provisions at this juncture for proper appreciation of the merits of this petition. It reads as under :

"2. x x x x x x x x
"(18) 'tenant' means a person who holds land on lease and includes-

(a) a person who is deemed to be a tenant under section 4;

(b) a person who is a protected tenant,and
(c) a person who is a permanent tenant;
(d) a person,who,after the surrender of his tenancy in respect of any land at any time after the appointed day but before the specified date has continued,or is deemed to have continued,to remain in actual possession,with or without the

consent of the landlord,of such land till the specified date;

and the word "landlord" shall be construed accordingly."

It could very well be seen from the aforesaid definition that a tenant includes a person who is deemed to be a tenant under section 4. Section 4 defines and prescribes as to who are deemed tenants. It reads thus:

"A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not-

(a) a member of the owner's family; or

(b) a servant on wages payable in cash or kind but not in crop share or hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family,or

(c) a mortgagee in possesion.

Explanation I- A person shall not be deemed to be a tenant under this section if such person has been on an application made by the owner of the land as provided under section 2A of the Bombay Tenancy Act,1939,declared by a competent authority not to be a tenant.

Explanation II- Where any land is cultivated by a widow or a minor or a person who is subject to physical or mental disability or a serving member of the armed forces through a tenant then notwithstanding anything contained in Explanation I to clause (6) of section 2,such tenant shall be deemed to be a tenant within the meaning of this section."

It is seen from the aforesaid provisions that in a deemed tenancy a member of owner's family is excluded from the deeming fiction of a tenant.Thus, a member of owner's family cannot be said to be a deemed tenant even if he is lawfully cultivating the land belonging to the owner.

'Deemed tenant' or a 'statutory tenant' is defined to mean a person who lawfully cultivates any land belonging to another person if such land is not cultivated personally by the owner and if such person is not a

member of the owner's family or a servant on wages payable in cash or kind but not any share or hired labour cultivating the land under personal supervision of the owner or any member of the owner's family or mortgagee in possession.

The Mamlatdar and ALT and the appellate authority found on facts that Bhaijilbhai Kalidas was
the tenant and he was not a member of the owner's family. This finding of fact came to be reversed by the GRT. Firstly, the Tribunal took the view that Bhaijibhai Kalidas is daughter's father-in-law and,therefore, he being Vevai of Pasiben and Pasiben being widow,Bhaijibhai would become a member of the owner-Pasiben's family and,therefore, his cultivation of the disputed land would be in the capacity as a member of the owner's family.This conclusion of the Tribunal is not only unsupportable by the facts and material on record but is revolting against the evidence on record and contrary to the factual finding consistently and concurrently recorded by the two authorities below. It may be possible to argue that the word 'family' ought not be construed by restriction or narrow sense meaning only member of the family because the Act applies to all tenants irrespective of personal laws which govern them. The word 'family' not having been statutorily defined or prescribed in the Act,general meanaing of the word in the context of cultivation of land could be taken into consideration. Family relations do not come to end for general purpose of blood relations by partition or separation which severes legal status of a joint family.Liberal meaning of the word 'member of family' is required to be given and it can only be said that 'family' means group of people related by blood and/or marriage relation.So,in case of marriage of son with the daughter-in-law, obviously, the son-in-law ,on marriage, would become a member of the family and vice-versa for the purpose of the Act. However, relationship arising out of marriage cannot be stretched to the father-in-law of the daughter or for that purpose of a son also. It is nobody's case that in the present case,deceased Bhaijibhai was staying with the owner of the land Pasiben or that he was depending on her. It is true that mere residence itself is no ground to hold one to be a member of the family. But there must be something to connect Vevai (father-in-law of the daughter or son) to be a member of the family. There is no such evidence. On the contrary,it is found on facts that Bhaijibhai Kalidas was in charge of agriculture cultivation and operation work in the disputed land prior to relationship arising out of marriage. Possession of Bhaijibhai Kalidas of the disputed land and is enjoyment

is since 1946 and at that time,there was no relationship between the two families of Bhaijibhai and Pasiben.

It is not in dispute that marriage took place much after 1950. Revenue records of 1948-49 to 1982-83 clearly go to show that in Khed Hak column,Bhaijibhai Kalidas's name was shown and he was personally cultivating the land. Not only that, by virtue of entry No.5392 in the records of rights, Bhaijibhai Kalidas is shown as tenant. It is also observed by the Deputy Collector that entry is recorded since 1948 in the name of Bhaijibhai. Thus,Bhaijibhai is shown to be the tenant in respect of the disputed land since 1946,much prior to relationship of marriage between the two families. This aspect is ignored by the Tribunal.

Not only that,it is found from the facts on record that Bhaijibhai had purchased electric motor for irrigation. He was also making payment for electric charges. He was shown as a tenant in the records of rights. A relative who is not concerned with tenancy rights in respect of the disputed land would not be shown as a tenant in respect of some land since 1946 and would not purchase electric motor for irrigation and would not go on making payment for electric consumption charges. As per the [[revenue records, he was personally cultivating the land since 1946. Could it be said to be relationship by marriage or relationship of owner and tenant ? Obvious answer would be that it is a relationship of owner and tenant. The tribunal misdirected itself and against might of record of the case, concluded that Bhaijibhai Kalidas was a relative by marriage and that he entered into possession after the relationship. This finding is unjust,illegal and perverse warranting interference of this court exercising its powers under Article 227 of the Constitution of India.

The Tribunal's conclusion that Bhaijibhai was a member of the family and,therefore, his cultivation cannot be said to be cultivation of a tenant is also, totally, illegal and erroneous. The term 'a member of owner's family' is capable of more than one interpretation. It is also true that it is a wider term. It is equally true that liberal interpretation has to be made. Member of the family would mean a person who is connected by blood of affinity and it would also mean a person or body of persons living in one house or under one head. In the latter case,there is no reason why family should not comprise not only of parent and children but other relatives. In a given case, special circumstances may arise to consider a person as a member of the family ,but so is not the

factual scenario in the present petition.

Court is also obliged to consider the intent and object of the provisions made by the legislature. The underlying purport and ultimate desideratum of the provisions of Section 4 have recognised two classes of tenants- (i) contractual tenant and (ii) statutory tenant who can be described for brevity sake,'deemed tenant' . Deemed tenant or statutory tenant is prescribed and defined to mean person who lawfully cultivats any land belonging to another person if such land is not cultivated personally by the owner and if such person is not a member of the owner's family or a servant on payment basis in cash or kind but not any share of hired labour cultivating the land under personal supervision of the owner or any member of owner's family or mortgagee in possession. Thus,it is in the very nature of things that if the members of the family were to cultivate,there would hardly be any case of tenancy.If other members who are cultivating the land of the owner are members of the family, then in that case,they cannot claim to be tenants. So is not the factual scenario in the present case. This court has not the slightest hesitation in holding that deceased Bhaijibhai Kalidas cannot be said to be a member of the family of the owner Pasiben. On the contrary, there is credible ,dependable and weighty evidence on record to suggest that deceased Bhaijibhai was cultivating the land of owner Pasiben,as a tenant. It is explicit from the record of the present case that there was relationship of master and tenant and not the relationship by marriage when possession was given and the tenant entered into disputed land as early as in the year 1946.From all counts, the petitioners who are heirs of deceased Bhaijibhai Kalidas are tenants being heirs of deceased tenant Bhaijibhai and the impugned judgment and order recorded by the GRT is unjust,illegal and perverse requiring inteference of this court exercising its extra-ordinary,equitable,supervisory and prerogative powers under Article 227.

In the result, the impugned judgment and order of the Tribunal dated 2l.4.1994 are quashed and set aside and this petition is allowed restoring the judgments and orders of the authorities below as at Annexures B and C. Rule is made absolute with no order as to costs.

--